

Michael C. Modansky, (MM7537)
Bivona & Cohen P.C.
88 Pine Street
New York, New York 10006-1886
(212) 363-3100 •Fax (212) 363-9824
Email: michael.modansky@bivonacohen.com

*Attorney for Defendant National Union Fire
Insurance Company of Pittsburg, Pa.*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

TIG INSURANCE COMPANY

Plaintiff

v.

THE FAIRCHILD CORPORATION, et al

Defendants

CASE NO. 1:07-cv-08250-JGK

ECF case (JGK)

**DEFENDANT NATIONAL UNION FIRE
INSURANCE COMPANY OF
PITTSBURGH, PA.'s MEMORANDUM
IN SUPPORT OF ITS CROSS-MOTION
TO DISMISS OR ALTERNATIVELY TO
STAY THIS ACTION**

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES..... ii

STATEMENT OF FACTS..... 2

ARGUMENT.....2

1. The Rules and Current case law permits National Union to adopt
and incorporate the arguments of Fairchild in support of its Cross Motion..... 2

2. This litigation should be dismissed or alternatively stayed.....3

CONCLUSION.....3

TABLE OF AUTHORITIES

CASES

In re Alstom SA Securities Litigation, 406 F.Supp.2d 346, 351, n.2;
(S.D.N.Y. 2005).....2

Colorado River Water Conservation Dist. v. U.S., 424 U.S. 800 (1976).....3

Leasco Data Processing Equip. Corp. v. Maxwell, 1972 WL 314, *12
(S.D.N.Y. April 25, 1972).....2

Wilton v. Seven Falls Co., 515 U.S. 277 (1995).....3

RULES and STATUTES

Federal Rules of Civil Procedure §10(c).....

STATEMENT OF FACTS

National Union has reviewed the factual presentation of the Ohio state action involving Milacron and other carriers, contained in the Motion to Dismiss of the co-defendant The Fairchild Corporation ("Fairchild"). It finds that Fairchild's presentation for the purpose of these motions to be accurate and complete. Therefore, to avoid unnecessary duplication, National Union adopts the factual presentation of Fairchild.

As indicated in the Modansky Declaration the purpose of the National Union Cross Motion is to make sure that any ruling applied to the Fairchild Motion was applied to all parties in this case.

ARGUMENT

1. The Rules And Current Case law Permits National Union To Adopt And Incorporate The Arguments Of Fairchild In Support Of Its Cross Motion

National Union respectfully adopts and incorporates pursuant to Fed R. Civ. P. 10(c), the arguments set forth in the Memorandum in Support of the Motion to Dismiss of Fairchild, filed in this Court on December 10, 2007. *See, e.g., In re Alstom SA Securities Litigation*, 406 F.Supp.2d 346, 351, n.2; (S.D.N.Y. 2005) (noting that defendants had "joined in and adopted the arguments set forth in the Memorandum of Law in Support of the Alstom Defendants' Motion to Dismiss"); and *Leasco Data Processing Equip. Corp. v. Maxwell*, 1972 WL 314, *12 (S.D.N.Y. April 25, 1972) (acknowledging that Robert Maxwell had joined in and incorporated by reference the memorandum in support of co-defendant Robert Fleming Inc.'s motion to dismiss).

2. This Litigation Should Be Dismissed Or Alternatively Stayed

For the reasons set forth in the Motion to Dismiss of The Fairchild Corporation (“Fairchild”), filed with this Court on December 10, 2007, which is respectfully incorporated herein Defendant National Union Fire Insurance Company of Pittsburgh, Pa. (“National Union”) respectfully moves the Court to dismiss the Complaint filed by Plaintiff in accordance with the federal abstention principles articulated by the United States Supreme Court in *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995) and *Colorado River Water Conservation Dist. v. U.S.*, 424 U.S. 800 (1976) as well as those cases that followed that demonstrated the principles of those cases and are cited by Fairchild on pages 3-14 of its Memorandum.

CONCLUSION

For reasons set forth above and in the Fairchild Motion to Dismiss or alternatively Stay this Litigation, National Union requests that the Court dismiss this litigation in favor of the state action pending in Ohio. In the alternative the Court should stay this matter pending the outcome of the Milacron state action.

BIVONA & COHEN

By 

Michael C. Modansky (MM7537)

88 Pine Street

New York, New York 10006-1886

(212) 363-3100 • Fax (212) 363-9824

Email: michael.modansky@bivonacohen.com

Attorney for Defendant National Union Fire Insurance Company of Pittsburgh, Pa.